

TRANSPORTATION REPORT

To The Montana Wheat & Barley Committee

From: **Terry Whiteside**

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Congress corralling rail monopoly power

WASHINGTON – The railroads' arrogance toward employees and captive shippers is starting to meet resistance in Congress. The UTU PAC is playing an important role.

As reported elsewhere, the UTU PAC-- which gives the UTU significant influence in Congress and state legislatures by helping to elect labor-friendly lawmakers -- was used to bring CSX to the bargaining table and end its practice of subjecting Amtrak and commuter rail employees to double jeopardy, which caused many to be fired from their Amtrak and commuter rail jobs.

Also, legislation is being readied in Congress requiring the Surface Transportation Board (STB) to cease operating as a wholly owned subsidiary of the railroad industry.

By requiring the STB to do as the Interstate Commerce Act instructs, rather than as the railroads wish, the legislation could eventually reverse regulatory decisions that have gutted labor protection where short lines are created – often for the sole purpose of forcing down wages and eliminating employee benefits.

Meanwhile, on March 5, the Senate Judiciary Committee favorably reported, by a

14-0 vote, a bill subjecting railroads to the same antitrust laws as other American industry.

The Antitrust Enforcement Act of 2009, authored by Sen. Herb Kohl (D-Wisc.) would repeal the railroads' partial antitrust exemption from the antitrust laws and allow state attorneys general and the Federal Trade Commission to review mergers under the antitrust laws.

Also, it would allow private parties to sue for three-fold damages and pursue court orders to halt anticompetitive conduct by the carriers.

The railroads were so busy trying unsuccessfully to stop that vote by the Senate Judiciary Committee that they did not have time to respond to a Bloomberg News request for comment on a National Transportation Safety Board hearing March 4 that affected their member carriers.

Yes, the railroads are on the defensive, big time, as labor friendly lawmakers and a labor-friendly Obama administration look closely at the carriers' past and present conduct toward captive shippers and rail labor.

The Antitrust Enforcement Act, as favorably voted out of the Senate Judiciary Committee, is expected to reach the Senate floor for a vote by Memorial Day.

A similar antitrust bill in the House, sponsored by Rep. Tammy Baldwin (D-Wisc.) is expected to be reported to the House floor for a vote by May.

Railroad monopoly power has "been a major problem for part of a sector of our economy, rural businesses, where we're trying to promote more competition," said Sen. Amy Klobuchar (D-Minn.), who co-sponsored the antitrust bill.

Rail captive shippers say that in spite of the economic recession, railroad monopolies are allowing railroads extensive pricing power, as evidenced by significant jumps in profits during 2008. Union Pacific, for example, reported an almost 40 percent jump in profits during the 4Q 2008, while virtually all other sectors of the economy were sliding into recession.

Robert Szabo, executive director of a rail captive shipper group, Consumers United for Rail Equity, said that the Senate Judiciary Committee's unanimous vote in favor of the antitrust bill "shows the growing support for the antitrust legislation and the increasing awareness in Congress of rail customer problems."

UTU International President Mike Futhey, and UTU National Legislative Director James Stem, have been meeting lately with Szabo and other captive shipper

representatives to discuss matters of mutual concern.

Former congressman Glenn English, now CEO of the National Rural Electric Cooperative Association, said, with regard to the antitrust bill, "The chairmen of the committees of jurisdiction are supporting the legislation, and these congressional leaders, as well as more and more members of Congress, are hearing about rail problems from consumers, manufacturers, farmers and regulators back home."

Corralling the STB

Separately, Sen. Jay Rockefeller (D-W.Va.), who is chairman of the Senate Commerce Committee, and Rep. Jim Oberstar (D-Minn.), who is chairman of the House Transportation and Infrastructure Committee, are readying legislation to level the rail regulatory playing field.

Rockefeller and Oberstar are preparing legislation that will reform the rate challenge process of the Surface Transportation Board – essentially requiring that the STB follow the Interstate Commerce Act rather than act as a wholly owned subsidiary of the railroad industry.

The STB and its predecessor, the Interstate Commerce Commission, have rubber-stamped railroad merger after railroad merger that adversely affected rail employees as well as captive shippers.

The STB also took it upon itself, during the early 1980s, to trample on the Interstate Commerce Act's promise of labor protection in line sales and leases. It is a problem that persists today.

Congress is beginning to take note that, all too frequently, railroads hire, to lucrative positions, rail regulators who have cast votes favoring railroads – votes that adversely affect employees and captive shippers.

This, according to critics of the agency, sends a veiled signal to STB senior staff and regulators that, if they vote with the railroads, there will be lucrative railroad employment awaiting them at a later date.

This problem, which continues today, was first identified by consumer advocate Ralph Nader more than three decades ago.

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